

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6104

PETITION OF HOMA RAVANBAKHS

(Hearings held November 30 and December 7, 2005)

OPINION OF THE BOARD

(Effective date of Opinion, March 16, 2006)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Section 59-C-1.323(a). The petitioner proposes the construction of a new single-family dwelling that requires a variance of ten (10) feet as it within thirty (30) feet of the established front building line [Bradley Boulevard] and a variance of five (5) feet as it is within twenty (20) feet of streetline setback [Fairfax Road]. The required established building line is forty (40) feet and required streetline setback is twenty-five (25) feet.

Norman Knopf, Esquire, and Andrew Strongin, Esquire, represented the petitioner at the public hearing. Robert Greenberg, an architect, appeared as a witness for the petitioner.

Robert Burruss and Joan Wathen, adjoining neighbors, appeared in opposition to the variance request.

The subject property is Lot 13, Block 3A, Bradley Hills Subdivision, located at 5100 Bradley Boulevard, Chevy Chase, Maryland, 20815, in the R-60 Zone (Tax Account No. 00442073).

Decision of the Board: Requested variances **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the construction of a new single-family dwelling.
2. Mr. Knopf stated that the property is located at the intersection of Bradley Boulevard and Fairfax Road. Mr. Knopf stated that the property borders several different types of zoning: across Bradley Boulevard to the north of the subject property are a number of large new homes; across Fairfax Road to the east of the subject property is

a townhouse project; and visible from the corner of Bradley Boulevard and Fairfax Road is the back of a shopping center.

3. Mr. Knopf stated that the original house was built in the 1930s and that the lot is irregularly shaped. The subject property is trapezoidal in shape and it is bordered by similarly shaped lots in a neighborhood of rectangular lots. The subject property is in the R-60 Zone and it is 7,450 square feet. See, Exhibit No. 10 [zoning vicinity map]. Mr. Knopf stated that the subject property is a large lot with the smallest percentage of land to build on, and that coupled with the application of required setbacks for the property, the resulting buildable envelope is 1,219 square feet.
4. Mr. Knopf stated that the location of the property's prior house resulted in a very small rear yard and that the variance request would provide a usable rear yard. Mr. Knopf stated that in discussions with the Department of Permitting Services (DPS), the department's position is that if a house is torn-down and the lot meets the zoning criteria for current standards, then the current setback standards would apply. Mr. Knopf stated that the practical difficulty caused by the existing conditions of the lot is to try to build a normal size house in today's market for today's family. See, Exhibit No. 4 [existing/proposed site plan].
5. The petitioner testified that the existing house appears bigger from the outside than it is on the inside and that the existing house has only two bedrooms, a very small kitchen and an unusable basement.
6. Mr. Greenberg testified that the design for the proposed house would have at least four bedrooms and other appropriate house spaces and that the petitioner requested certain elements be included in the design of the house. Mr. Greenberg testified that in designing a house that would include the petitioner's requested elements it was difficult to deal with the shape of the lot and the square footage he had to work with.
7. Mr. Burruss testified that the variance request would impact the quality of life on the north side of his house and that the proposed house would be closer to his house than the prior house. Ms. Wathen testified that the petitioner has failed to show any uniqueness of the property and that the properties that surround the petitioner's lot, [Lots 12, 14, 15], are all irregularly shaped lots. Ms. Wathen testified that all of the lots that surround the petitioner's lot are small and substandard for the zone and that petitioner's lot is the largest of those lots.
8. Ms. Wathen testified that the practical difficulty of the petitioner's lot is that the lot as it currently is a buildable lot, but too small for a large

house as proposed. Ms. Wathen testified that because the petitioner's lot is a corner property that does not make the lot unique and that the property is subject to the same standards as other corner lots in the County.

10. Ms. Wathen testified that the new house, as proposed, would sit forward of the other houses on Bradley Boulevard and would not be in conformity with the master plan or the local plan of the neighborhood. Ms. Wathen testified that the variance if granted would be detrimental to the use and enjoyment of her property.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variances must be denied. The requested variances do not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that while the shape of the petitioner's lot has a distinctive trapezoidal shape, the petitioner's lot shares this distinctive shape with several other lots in the neighborhood. Lot 30 at the intersection of Fairglen Lane and Fairfax Road, Lot 1 at the intersection of Fairglen Road and Glenbrook Road, Lot 15 at the intersection of Fairglen and Fairfax Road, are all similar in shape and size to the petitioner's lot. The Board notes that Lot 14, Block 3B, is shaped exactly the same as the petitioner's lot, it is a corner lot, and the lot is smaller than the petitioner's lot. The Board finds that the petitioner's neighborhood is made up of small, unusually shaped lots; that the petitioner's lot significantly exceeds the minimum lot size for the zone; and that the petitioner's lot is larger than most of the lots in the immediate area.

The Board finds that the strict application of the zoning regulations does not result in practical difficulties to or an undue hardship upon the property owner.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions*

The Board finds that the existing house is being demolished and a new house is being constructed and that the subject the property could accommodate a new structure without the necessity of the requested variances. Therefore, the Board finds that the requested variances are not the minimum reasonably necessary to overcome any alleged constraints imposed by compliance with the Zoning Ordinance.

The petition does not meet the requirements of Section 59-G-1.3(a) or (b) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of ten (10) feet from the required forty (40) foot established front building line and of five (5) feet from the required twenty-five (25) foot streetline setback for the construction of a new single-family dwelling are denied.

The Board adopted the following Resolution:

Board member Wendell M. Holloway was necessarily absent and did not participate in this Resolution. On a motion by Caryn L. Hines, seconded by Allison Ishihara Fultz, Chair, with Donna L. Barron and Angelo M. Caputo, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 16th day of March, 2006.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.